

**REMARKS**

In accordance with the above amendments, claims 1-3 have been amended. Claims 1-7, 9-24 and 26-34 remain under consideration in this application. No claim has been allowed.

In the detailed Action, restriction to one of the following inventions was required by the Examiner:

- I. Claims 1-7 and 9-24, drawn to an apparatus for controlling a load;
- II. Claims 26-34, drawn to a method to control the load on a joint.

In response to the requirement, applicant elects the claims of Group I, i.e., claims 1-7 and 9-24, drawn to an apparatus for controlling a load. This election is made with traverse and it is respectfully requested that, in view of the above amendments and the remarks that follow, the restriction requirement be withdrawn and all the claims examined.

Note that the amendments to claim 1 clearly render that claim in parallel with method claim 26 thereby making the apparatus and process coextensive. This being the case, it is believed that the process cannot be practiced by another materially and different apparatus nor can the apparatus, as claimed, be used to practice another and materially different process. Accordingly, the position that the claims relate to two independent or indistinct inventions which have acquired

separate status in the art cannot be maintained and therefore restriction for examination purposes is no longer properly indicated. Thus, the apparatus clearly is defined as one for controlling the load on articular cartilage-forming part of an articular joint of a human or animal. Note also that the apparatus is adapted to be attached to first and second bones and never to a single or long bone as suggested as a possibility by the Examiner.

Applicant now believes that both the apparatus and process claims are of a corresponding scope and therefore respectfully request that the Examiner reconsider his position and rejoin all the claims for examination.

Applicant looks forward to early examination and allowance of all the claims.

Respectfully submitted,

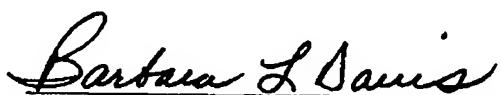
NIKOLAI & MERSEREAU, P.A.



C. G. Mersereau  
Registration No. 26205  
900 Second Avenue So.  
Suite 820  
Minneapolis, MN 55402  
(612) 339-7461

**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that the foregoing Amendment Under 37 CFR 1.111 in response to the Official Action mailed August 30, 2006, a Petition for a one-month extension of time, in application Serial No. 10/675,855, filed on September 25, 2003, of Edward Draper, entitled "BONE FIXATED, ARTICULATED JOINT LOAD CONTROL DEVICE" and a transmittal letter are being sent by facsimile transmission to: The Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on October 30, 2006.



Barbara L. Davis  
On behalf of C. G. Mersereau

Date of Signature: October 30, 2006